

STATE OF TEXAS	§	
	§	FUNDING AGREEMENT FOR INFRASTRUCTURE
COUNTY OF BEXAR	§	IMPROVEMENTS ON LAREDO STREET

This FUNDING AGREEMENT FOR INFRASTRUCTURE IMPROVEMENTS ON LAREDO STREET (the "Agreement") is hereby made and entered into by and between the CITY OF SAN ANTONIO ("City"), a Texas municipal corporation, GOODWILL INDUSTRIES OF SAN ANTONIO, a Texas non-profit corporation ("Goodwill"), VISTANA, LTD., a Texas Limited Partnership ("Vistana") and MPL FAMILY LIMITED PARTNERSHIP, a Texas limited partnership ("MPL"). Goodwill, Vistana and MPL are collectively referred to as "Goodwill, Vistana and MPL" and City, Goodwill, Vistana and MPL are collectively referred to as the "Parties."

Recitals

WHEREAS, currently Laredo Street between Commerce Street and Dolorosa is configured as a single lane one-way roadway; and

WHEREAS, Goodwill, Vistana and MPL each operate businesses that are adjacent to Laredo Street and Goodwill, Vistana and MPL are interested in having this segment of Laredo Street converted to a two-way roadway in order to obtain direct access to their respective businesses from Dolorosa Street, which is currently not possible; and

WHEREAS, City has completed a review of the roadway and has determined that converting this segment of Laredo Street to a two-way roadway is possible with some minor infrastructure improvements and would not create an adverse impact to the existing traffic conditions; and

WHEREAS, City has agreed to complete the conversion of this segment of Laredo Street to a two-way roadway, substantially in accordance with the City plan (the "City Plan"), attached hereto as Exhibit "A" and made a part hereof for all purposes, at a total estimated cost of \$90,000.00 as set forth in the City Construction Estimate attached hereto as Exhibit "B" and made a part hereof for all purposes (the "City Estimate"); and

WHEREAS, City has agrees to contribute funds toward the completion of this conversion in the amount of \$58,913.65 from the 2007 Downtown Transportation Infrastructure Improvements Fund; and

WHEREAS, City agrees to accept a total of \$31,086.35 from the Goodwill, Vistana and MPL to complete the infrastructure improvements necessary to convert this segment of Laredo Street from a one-way roadway to a two-way roadway in accordance with the City Plan and the City Estimate; and

WHEREAS, the Parties desire to enter into this Funding Agreement, through which City will oversee and administer the construction of the Project; and

NOW THEREFORE, in consideration of these premises and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

I. TERM

1.01 This Agreement shall continue in full force and effect from the date of its execution by all parties and shall continue until all construction is complete and accepted by City.

II. GENERAL RESPONSIBILITIES

2.01 Provided City receives the Goodwill, Vistana and MPL Funding, City hereby accepts full responsibility for the performance of all services and activities described in this Agreement to fully construct the Project on a timely basis as described herein. The funds provided for under this Agreement shall only be used for work directly related to the Project.

2.02 Unless written notification by Goodwill, Vistana and MPL to the contrary is received and approved by City, Goodwill, Vistana and MPL, the designated representative for Goodwill is Robert P. Dugas, for Vistana is Edward A. Cross, II, and for MPL is Paul B. Carter, respectively, responsible for the management of this Agreement on the part of Goodwill, Vistana and MPL.

2.03 The Public Works Director ("Director") or his designee is responsible for the administration of this Agreement on behalf of City.

2.04 Communications between City, and Goodwill, Vistana and MPL shall be directed to the designated representatives of each as set forth in Article XII, of this Agreement.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 City warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

3.02 If applicable, plan design must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin.

IV. LEGAL AUTHORITY

4.01 Goodwill, Vistana and MPL represent, warrant, assure, and guaranty that each possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

4.02 The signers of this Agreement for Goodwill, Vistana and MPL represent, warrant, assure and guaranty that he or she has full legal authority to execute this Agreement on behalf of Goodwill, Vistana and MPL, respectively and to bind Goodwill, Vistana and MPL, respectively to all terms, performances and provisions herein contained.

4.03 City represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

V. PERFORMANCE BY CITY

5.01 Subject to receipt of the Goodwill, Vistana and MPL Funding of the Project by Goodwill, Vistana and MPL, City, in accordance and compliance with the terms, provisions and requirements of this Agreement, shall oversee, manage, perform, and provide all of the activities and services necessary to satisfactorily complete the Project. City shall provide construction plans, schedule of work and budget to Goodwill, Vistana and MPL for review and approval within four weeks of the execution date of this Agreement, no later than October 2012. Date of completion of construction of the Project is approximately April 2013, subject to the proceeding and subsequent provisions of this Agreement. If the Project construction is not started by September 30, 2013, subject to the provisions of this Agreement, the funds or remaining funds contributed by Goodwill, Vistana and MPL shall be returned.

5.02 Performance of City's obligations under this Agreement shall be subject to extension due to delay by reason of events of force majeure, and City's obligations shall be abated during any period of force majeure. For purposes of this Agreement, force majeure shall include damage or destruction by fire or other casualty, condemnation, strike, lockout, civil disorder, war, acts of God, unusually adverse weather or wet soil conditions or other causes beyond the parties' reasonable control, including but not limited to, any court or judgment resulting from any litigation affecting the Project ROW or this Agreement ("Force Majeure").

VI. GOODWILL, VISTANA AND MPL'S FUNDING RESPONSIBILITIES

6.01 In consideration of City's pledge to perform all services and activities set forth in this Agreement, Goodwill, Vistana and MPL agree to fund a portion of the cost of construction of the Project. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by Goodwill, Vistana and MPL hereunder shall not exceed the sum of \$31,086.35.

6.02 Subject to approval and execution of this Agreement by City, Goodwill, Vistana and MPL shall provide City the amount of \$31,086.35 ("Goodwill, Vistana and MPL Funding") in equal shares within fifteen (15) calendar days following Goodwill, Vistana and MPL's receipt of written notice from City of the approval of this Agreement by the City Council of City.

6.03 Goodwill, Vistana and MPL shall not be obligated nor liable under this Agreement to any party, other than City, for payment of any monies or provision of any goods or services.

6.04 Additionally, City and Goodwill, Vistana and MPL agree that this Agreement does not obligate City's General Fund monies or any other monies or credits of City unless budgeted and appropriated by City.

VII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GOODWILL, VISTANA AND MPL

7.01 City agrees to maintain a numbered account for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support thereof pertaining to the use of City funds and the Goodwill, Vistana and MPL Funding provided under this Agreement.

7.02 City agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement.

City further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting principles; and
- (B) That City's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

7.03 City agrees to retain all books, records, documents, repolish, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years from the completion of the Project.

VIII. ALLOWABLE EXPENDITURES AND OWNERSHIP OF PROPERTY

8.01 Upon preparation of a construction plans, schedule of work and budget by City, City shall submit said plans, schedule of work and budget to Goodwill, Vistana and MPL for review by City and Goodwill, Vistana and MPL. Once approved by the Parties, such plans, schedule of work and budget shall not be changed without approval by the Parties. Costs shall be considered allowable only if incurred directly and specifically in the performance of and in compliance with this Agreement and with all city, state and federal laws; regulations and ordinances affecting City's operations hereunder.

Expenditures of the City funds and the Goodwill, Vistana and MPL Funding provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

IX. SEVERABILITY OF PROVISIONS

9.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

X. NON-WAIVER OF PERFORMANCE

10.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of any Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by any Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

10.02 No act or omission of a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to a Party hereunder or by law or in equity, such rights,

powers, privileges, or remedies to be always specifically preserved hereby.

10.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the City Council.

XI. ENTIRE AGREEMENT

11.01 This agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties.

XI. NOTICES

12.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY:	Majed A. Al-Ghafry Director, Public Works City of San Antonio P.O. Box 839966 San Antonio, Texas 78283-3966
GOODWILL:	Goodwill Industries of San Antonio 406 West Commerce San Antonio, Texas 78207-3102 Attn: Bob Dugas, President/CEO (210) 924-8648
VISTANA:	Vistana, Ltd. 2013 Broadway San Antonio, Texas 78215 Attn: Edward A. Cross, II, Manager (210) 824-9080, extension 228
MPL:	MPL Family Limited Partnership 802 Augusta, Suite 100 San Antonio, Texas 78215 Attn: Paul B. Carter (210)

Notice of change of address by any Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

XIII. PARTIES BOUND

13.01 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XIV. RELATIONSHIP OF PARTIES

14.01 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the Parties hereto.

XV. TEXAS LAW TO APPLY AND VENUE

15.01 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas and exclusive venue shall lie in Bexar County, Texas.

XVI. GENDER

16.01 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

CAPTIONS

17.01 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ____ day of _____, 2012.

CITY OF SAN ANTONIO

By: _____

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

**GOODWILL INDUSTRIES
OF SAN ANTONIO**

By: Robert P. Dugas

Printed name: ~~Bob~~ Robert P. Dugas
Title: President/CEO

VISTANA, LTD.

By: Edward A. Cross, II
By: Edward A. Cross, II
Printed Name: Edward A. Cross, II
Title: Manager

**MPL FAMILY LIMITED
PARTNERSHIP**

By: Paul B. Carter
Printed Name: Paul B. Carter

Title: Managing Partner

EXHIBIT "A"

LAREDO STREET 2-Way Conversion Plan

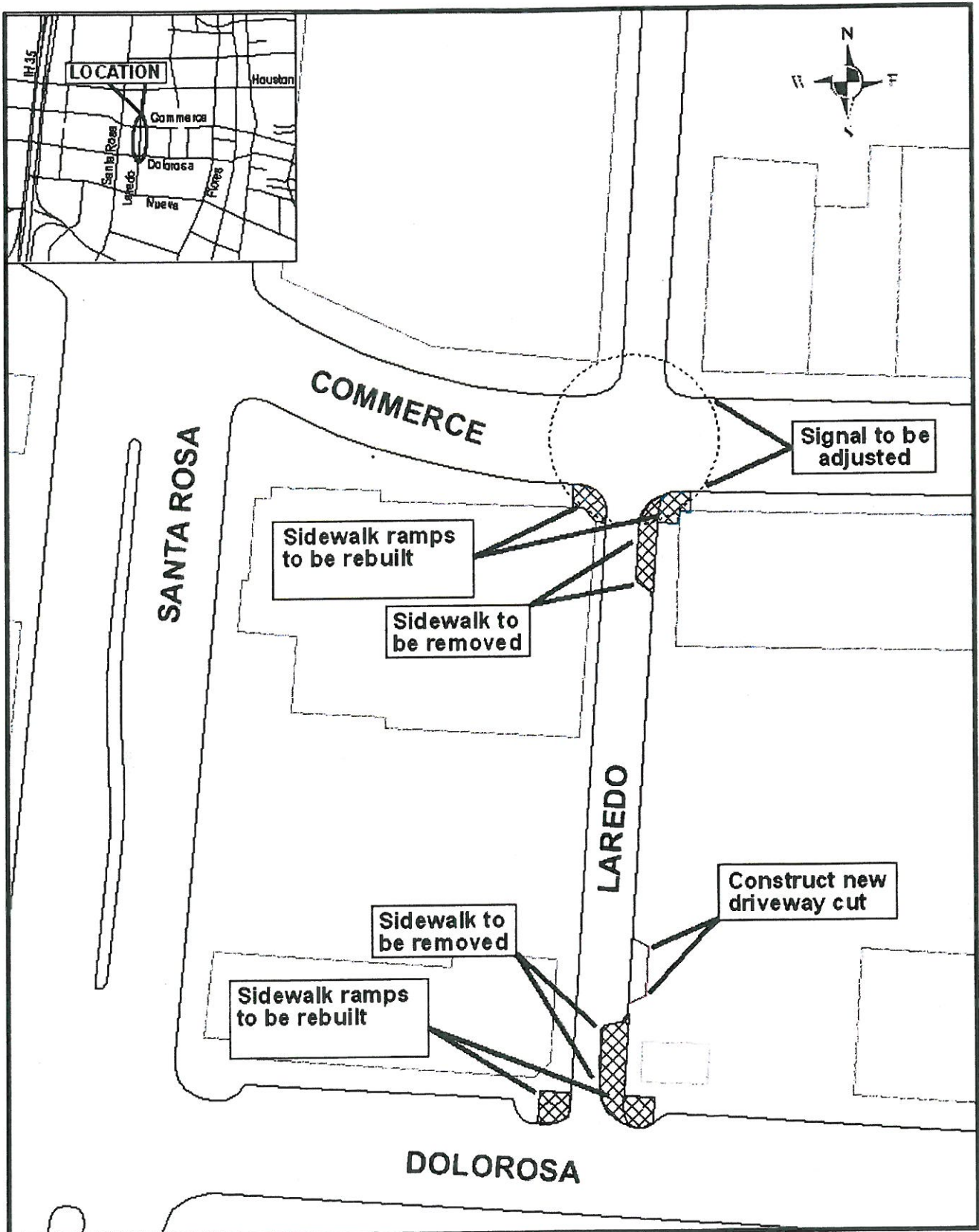


EXHIBIT "B"
TO
FUNDING AGREEMENT FOR INFRASTRUCTURE
IMPROVEMENTS ON LAREDO STREET
[CITY ESTIMATE]

LAREDO STREET TWO-WAY CONSTRUCTION
ESTIMATE SHEET

DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	AMOUNT
Mobilization (11%)	LS	1	\$4,977.41	\$4,977.41
Prep ROW (4%)	LS	1	\$1,809.97	\$1,809.97
Bonding (3%)	LS	1	\$1,357.47	\$1,357.47
Remove Concrete Curb	LF	160	\$3.65	\$584.00
Remove Concrete Sidewalk	SF	1,400	\$4.00	\$5,600.00
Excavation	CY	33	\$27.50	\$907.50
Curb	LF	140	\$14.00	\$1,960.00
Sidewalk Ramp	EA	2	\$3,000.00	\$6,000.00
Sidewalk (Pebble Finish)	SY	60	\$75.00	\$4,500.00
Street Pavers	SF	500	\$25.00	\$12,500.00
ATB (10")	SY	100	\$51.20	\$5,120.00
Asphalt (2")	SY	70	\$11.00	\$770.00
Signal Adjustment	LS	1	\$10,000.00	\$10,000.00
Sign & Pavement Marking Adjustment	LS	1	\$2,000.00	\$2,000.00
Traffic Control	LS	1	\$3,000.00	\$3,000.00
			SUBTOTAL	\$61,086.35
Milling and Asphalt Overlay	LS	1		\$20,000.00
			SUBTOTAL	\$81,086.35
Material Testing (2%)	LS			\$1,621.73
Capital Administration (9%)	LS			\$7,291.92
			TOTAL	\$90,000.00